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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,084	04/30/2001	John Mantegna	06975-207001	1606
26171	7590	06/22/2006	EXAMINER LAZARO, DAVID R	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			ART UNIT 2155	PAPER NUMBER

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)
	09/845,084	MANTEGNA ET AL.
	Examiner	Art Unit
	David Lazaro	2155

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) The period for reply expires _____ months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a) They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) They raise the issue of new matter (see NOTE below);
- (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. Applicant's reply has overcome the following rejection(s): _____.
 6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1,3-5,10,12-14,17,19-21 and 24-26.

Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

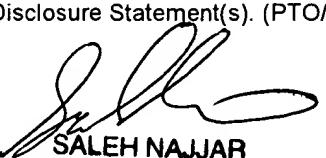
10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. Other: _____


SALEH NAJJAR
SUPERVISORY PATENT EXAMINER


 David Lazaro
 June 19, 2006

Continuation Sheet

Continuation of 11:

Applicants argue on page 2 of the remarks - *"The processing of Cohen involves adding or removing audio samples as a direct function of the determined difference based on a lookup table...It is clear from this table that Cohen does not apply a parameter to a difference to derive a number of samples to be added or removed."*

Examiner's response - The examiner notes the claim languages states "determining a parameter that relates to and amplifies the temporal drift based on the weighted comparison result" and "determining, based on the determined parameter, a number of samples to be inserted or removed from a playback data block". The claims do not state the application of a parameter to a difference to derive a number of samples to be added or removed. The claim language only requires a much broader relationship, i.e. "based on the weighted comparison result" and "based on the determined parameter". Such language does not limit the determination to a specific function. As such, the examiner asserts the "Duplication amount" described in the lookup table of Cohen is the determined parameter. This duplication amount both "relates to and amplifies the temporal drift" and is "based on the weighted comparison result" (with consideration given to the 103(a) combination). Furthermore, the duplication amount is the basis for determining the number of samples to be inserted or removed. Applicants' arguments are not persuasive.

Applicants argue on page 3 of the remarks -*"Borella, however, does not apply any weighting to a result of the comparison between jitters associated with the buffers, as*

claimed...Thus, Borella does not describe or suggest weighting the result of a comparison between a measured size of a receiving data buffer and a predetermined nominal data buffer size, as recited in independent claim 1."

Examiner's response - The examiner does not rely on Borella to explicitly teach weighting of a comparison between jitters associated with buffers or weighting the result of a comparison between a measured size of a receiving data buffer and a predetermined nominal data buffer size. Borella is simply relied upon to show that the concept of weighting in relation to some form of calculating is an obvious concept (Col. 19 lines 29-40). Cohen already teaches the comparison result and is only deficient of the idea of weighting. Borella shows that the use of weighting provides certain advantages in network environments related to real-time electronic communications (Col. 19 lines 29-40). The examiner also notes that it is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant (MPEP 2144). Applicants' arguments are not persuasive.

Conclusion

Claims 1, 3-5, 10,12-14, 17, 19-21 and 24-26 remain rejected under the same grounds of rejection presented in the 04/05/2006 office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lazaro whose telephone number is 571-272-3986. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


David Lazaro
June 19, 2006